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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,347	08/27/2003	Daniel L. Decker JR.	4600-4-CIP	6677

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EXAMINER

SCHWARTZ, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 08/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/650,347

Applicant(s)

DECKER ET AL.

Examiner

Christopher P. Schwartz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 13-23 is/are allowed.
- 6) ☐ Claim(s) 1,6-12,24,26,27 and 30-33 is/are rejected.
- 7) ☐ Claim(s) 2-5,25,28 and 29 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-0162)
- 6) ☐ Other: ____.

Christopher P. Schwartz
CHRISTOPHER P. SCHWARTZ
PRIMARY EXAMINER

DETAILED ACTION

1. The examiner contacted applicants regarding the "Blue Ox Apollo" pictures submitted. It was applicants best understanding the device shown in the pictures was invented after applicants prior '466 patent. Applicants also stated that an updated version to the device disclosed in the RoadMaster 98100 publication was submitted on an IDS. That IDS has not been received into the file. The examiner contacted "Blue Ox Apollo" inquiring about the date the pedal clamping arm was invented. However no return call has been received.

Information Disclosure Statement

2. The information disclosure statement has been received and considered.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1,6,7-12,24,26,27,30-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,8,4,6,11 of U.S. Patent No. 6,634,466 in view of the Roadmaster publication of 1999..

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Regarding claims 1,24 of the application Patent '466 claims in claim 1 a stationary plate or "upper member", a moveable plate or "lower member" slidably connected with the upper plate and a coupling interconnected to the stationary plate, but which is also connected to the moveable plate since the stationary and moveable plates are themselves interconnected, as claimed.

Claim 1 lacks a locking member.

The roadmaster publication is relied upon to show such a member at the retaining clip.

Because the device claimed in Patent '466 is adapted for use with and directly contact a brake pedal, and claims relatively moveable plates, one having ordinary skill in the art would have found it obvious to have modified claim 1 to include a locking mechanism to secure the plates to the brake pedal.

Regarding claims 6,7,30,31 these limitations are suggested by claims 4,6 of patent '466.

Regarding claims 8,9,32,33 simply to have included a "beaded edge", as broadly claimed, on the flanges as claimed in claims 4,6 of the patent would have been obvious to the ordinary skilled worker in the art for better securement of the flanges to the pedal or to better adapt the flanges to specific brake pedal configurations. The RoadMaster publication shows this, as broadly claimed, on the flanges of the translating members as seen on page 11.

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Regarding claims 10,11,26 note that claim 8 of the patent is similar to claim 1. Therefore the explanation above is relied upon for the missing limitation of the locking member.

Claim 11 of the patent is relied upon to anticipate claims 10,11,26,27 of the application.

Regarding claim 12, claim 8 of the patent claims and adjustable gripping means slidably interconnected to the stationary plate.

It would have been obvious to have modified claim 8 to include a handle on the adjustable gripping means (or lower member) so that it may be more easily adjusted with respect to the stationary plate.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1,6-12,24,26,27,30-33 are rejected under 35 U.S.C. 102(b) as being anticipated by the RoadMaster publication 98100.

Regarding claims 1,24 98100 discloses a brake pedal apparatus having an upper and lower members in slidable communication, as broadly claimed, a locking mechanism (adjustable arm, air cylinder, retaining clip etc.) having first and second (apply and release) positions, as broadly claimed, and a coupling member 54,56 connected to the lower member.

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Regarding claims 6-11,26,27,30-33 as broadly claimed, these requirements are met. See page 11 of the publication and note the "beaded edge" formed on the flanges, as broadly claimed. Note the spring shown.

Regarding claim 12, as broadly claimed, the "handle" could be interpreted as the triangular shaped projection on the lower member or the air cylinder etc. once the device is connected to the lower plate.

Allowable Subject Matter

7. Claims 2-5,25,28,29 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 13-23 are allowed.

Conclusion

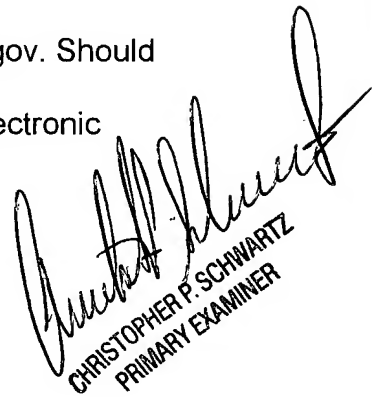
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Schwartz whose telephone number is 703-308-0576. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack W. Lavinder can be reached on 703-308-3421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Cps
7/29/04



CHRISTOPHER P. SCHWARTZ
PRIMARY EXAMINER